

## **REMARKS**

Applicant respectfully requests reconsideration of the rejections in view of foregoing amendments and the reasons that follow.

### ***I. Status of the Claims***

Claims 44 and 50 is currently amended. Claims 51 and 52 are canceled. Support for the amendment to claims 44 and 50 can be found in the specification on page 4, lines 16-19. No new matter is introduced.

After the entry of this Amendment, claims 44-50, 53 and 54 are pending.

### ***II. Rejections under 35 U.S.C. §102***

The Examiner rejects claims 44-48 and 50-53 as allegedly anticipated by U.S. Patent No. 4,142,526 to Zaffaroni et al. ("Zaffaroni"). (Office Action, page 2)

Applicant traverses in view of the amendment to claim 44. Zaffaroni cannot anticipate claims 44 because it does not teach the carboxylic acid co-monomer's content in the disclosed polymer.

The Examiner points to Col. 17, lines 38-42 of Zaffaroni. This portion describes coatings which includes polyanhydride polymers. However, it does not describe the copolymer of an ethylene comonomer with a carboxylic acid comonomer as recited.

Zaffaroni, at Col. 19, lines 46-68 describes a copolymer of unsaturated carboxylic acid and polymerizable hydrocarbon. However, it does not explicitly teach that the carboxylic acid comonomer's content as recited. According to the formula of the taught polymer presented at the bottom of Col. 19, the content of the carboxylic acid comonomer content will exceed 50 wt % of the polymer. Therefore, Zaffaroni fails to teach the amended claim 44 explicitly or inherently.

The content of the carboxylic acid comonomer in the copolymer as recited is important because it allows the carboxylic acid groups impart a high adhesion to the coating so that the coating strongly adheres to metal stent while the ethylene comonomer has a content which insures sufficient elongation of the coating to accommodate the

strain associate with stent expansion. *See* Specification, page 10, lines 6-12. Also, the copolymer coating so formed allows a relatively high and uniformly distributed loading of the drug in the polymer. *See* Specification, page 12 line 25 to page 13, line 7.

Zaffaroni fails to provide any teaching to the amended claim 44 and its dependent claims.

Applicant respectfully requests the reconsideration and withdrawal of the rejection on this ground.

### ***III. Obviousness Type Double Patenting Rejection***

The Examiner rejects claims 44 and 50-52 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12 and 13 of U.S. Patent No. 6,824,559. (Office Action, page 3)

Applicant respectfully traverses. However, to advance the prosecution of this application, Applicants file a terminal disclaimer herewith. Applicants believe the terminal disclaimer renders the rejection moot.

### ***IV. Claim Rejection under 35 U.S.C. §103***

The Examiner rejects claims 49 and 54 as allegedly being obvious over Zaffaroni. (Office Action, page 3) Applicants respectfully traverse.

As discussed above, Zaffaroni fails to provide any teaching to the amended claim 44 and its dependent claims. Zaffaroni not only fails to teach the carboxylic acid comonomer content range as recited, but also fails to suggest such range. This is so because the disclosed formulae foreclose the possibility of a carboxylic acid content being in the range of 5% to 50% by weight.

Moreover, Zaffaroni teaches that a copolymer suitable for its purpose can be a poly(carboxylic acids) having a carboxylate content of 100% by weight. This teaching points to a direction opposite to what is recited. *See* formula I described in Col. 18.

For the above reason, Zaffaroni cannot render claim 44 and its dependent claims obvious.

Applicant respectfully requests the reconsideration and withdrawal of the rejection on this ground.

**CONCLUSION**


Based on the above amendments and remarks, this application is believed to be in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. **07-1850**. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. **07-1850**.

Respectfully submitted,

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